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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of ROSENDO and
MARTHA AGUILAR.

B254983

(Los Angeles County
Super. Ct. No. BD417451)

MARTHA AGUILAR,

Respondent,

v.

MARIA ROCIO GALINDO,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Maren E. Nelson, Judge. Dismissed.

Holstein, Taylor and Unitt and Brian C. Unitt for Appellant.

Rudy Aguirre for Respondent.

This is an ostensible appeal by Maria Rocio Galindo (Galindo) from the trial court's denial of her "ex-parte application requesting her removal from the upcoming trial," which we construe as a motion seeking summary adjudication of an affirmative defense. Because the trial court's order is an interlocutory order and thus not appealable at this time, we dismiss the appeal.

BACKGROUND

I. Procedural history

The underlying cause of action concerns a petition to dissolve the marriage between Rosendo and Martha Aguilar.¹ During the dissolution action, Rosendo transferred real property (the property) to his girlfriend Galindo as a gift (for no consideration). Martha then brought Galindo into this action to quiet title (to establish her title to the property and quiet any other title claims), for cancellation of the deed transferring the property to Galindo, and for declaratory relief regarding the same. On the day before trial, Galindo filed for bankruptcy, listing the property, and filed a notice of automatic stay of the dissolution action pending the bankruptcy. The trial court bifurcated the issues: proceeding to trial on issues related to community property as between Rosendo and Martha and staying the issues related to Galindo pending the bankruptcy.

On November 16, 2010, after a bench trial, the trial court made an oral ruling that Rosendo's transfer of the property to Galindo was in violation of his fiduciary obligations. The trial court found that the property was purchased during the marriage and therefore is community property. The trial court then held that Martha is entitled to one-half the value of the property as of the date of transfer. The trial court reserved jurisdiction to determine that amount.

Over the next months, Martha, Galindo, and the bankruptcy trustee entered an agreement to sell the property, with half of the net proceeds set aside for Martha. On

¹ For the purpose of clarity, in the body of the opinion we will refer to Rosendo and Martha Aguilar by their first names. No disrespect is intended.

February 16, 2011, Galindo was discharged in bankruptcy.² The effect of the discharge was that Galindo was no longer legally required to pay certain debts specified by the bankruptcy order. On September 29, 2011, the bankruptcy trustee filed a motion in the bankruptcy proceedings to sell the property, which the bankruptcy court approved. The sale, however, did not close because of substantial liens on the property. On October 3, 2011, Martha filed a claim in the bankruptcy proceedings seeking money for half the value of the property. The next day, Martha moved in the dissolution action for relief from the automatic stay. On May 28, 2013, the bankruptcy trustee abandoned the property.

On September 26, 2013, the trial court in the dissolution action lifted the stay against Galindo, allowing Martha to proceed in her claims against Galindo regarding the property. On October 1, Martha requested a trial on those claims. On October 28, the trial court set trial for December 13.

Three days before trial, Galindo filed an “ex-parte application requesting her removal from the upcoming trial,” alleging that the trial court lacked jurisdiction over Galindo on several grounds: (1) the trial court’s November 16, 2010 decision that Martha is owed half the value of the property from Rosendo is res judicata that Galindo does not owe Martha anything, (2) Martha filed a lis pendens against the property and failed to convert it to a judgment lien prior to Galindo’s bankruptcy discharge, and (3) Martha did not file an objection in the bankruptcy proceeding therefore any claim by her related to the property has been discharged.

The trial court denied Galindo’s motion on February 6, 2014, and set trial for March 14. As to Galindo’s first argument, the trial court held the argument was nonsensical and noted that Galindo cited no legal authority for support. As to Galindo’s general argument of jurisdiction, the trial court held that the bankruptcy court only has limited jurisdiction and cannot have jurisdiction over something (like the property) that

² A bankruptcy discharge is automatically obtained after a period of time passes with no objection (in this instance, January 31, 2011).

the debtor (Galindo) does not own; further, the bankruptcy trustee here abandoned whatever interest, if any, the debtor owned in the property. As to Galindo's second argument, the trial court held that Galindo confuses a lien and a lis pendens. The former is an encumbrance on a property that can be discharged in bankruptcy; the latter is merely a notice of an adverse claim. Thus, Martha's claim is not a lien, and there was no judgment lien to be obtained. As to Galindo's third argument, the trial court held that Martha's claim to the property was not discharged in the bankruptcy proceeding.

Galindo filed a notice of appeal to this court. Galindo appeals the first and third issues, under the general theme of res judicata or waiver. In a one-page section titled "Appealability," Galindo argues the trial court's order dated February 6, 2014 is an appealable order for two reasons: under Code of Civil Procedure³ section 904.1, subdivision (a)(2), as an order from a final judgment, and subdivision (a)(6), as an order refusing to grant an injunction.

By letter, we invited supplemental briefing from the parties on the issue of appealability. Because the issue of appealability goes to our jurisdiction, we are duty bound to consider it on our own initiative. (*In re Marriage of Griffin* (1993) 15 Cal.App.4th 685, 689.) Galindo's response repeats the same arguments made in her merit brief and adds in the alternative that this court has the discretion to treat her notice of appeal as a petition for extraordinary writ.

II. Code of Civil Procedure provisions on appealability

Section 904.1, subdivision (a)(2) allows for appeals "[f]rom an order made after a judgment made appealable by paragraph (1)." In relevant part, paragraph (1) allows for appeals "[f]rom a judgment, except (A) an interlocutory judgment" Section 904.1, subdivision (a)(6) allows for appeals "[f]rom an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction."

³ All further statutory references are to the Code of Civil Procedure.

DISCUSSION

“““There is no constitutional right to . . . appeal.””” (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1432.) Instead, “[t]he right to appeal in California is wholly governed by statute.” (*In re Marriage of Griffin, supra*, 15 Cal.App.4th at p. 687.) The primary statute is section 904.1, which codified the final judgment rule. (*Ibid.*)

The final judgment rule—a fundamental principle of appellate practice throughout the United States—requires that appellate review of intermediate rulings must await final disposition of the case. (*In re Marriage of Griffin, supra*, 15 Cal.App.4th at p. 687.) In other words, appeal can only be taken of a final judgment or order disposing of the case. (*Ibid.*) An order is final when it ““decides the rights and duties of the parties and terminates the litigation.”” (*Id.* at p. 689.) An order is interlocutory (thus, not final) when “““anything further in the nature of judicial action on the part of the court is essential to a final determination of the right of the parties.””” (*Ibid.*)

Here, the trial court’s February 6, 2014 order is interlocutory, not final. Rather than terminating the litigation as to Galindo, the trial court’s order did the opposite. Trial is to proceed as to Galindo—specifically, on Martha’s claims against Galindo to quiet title, to cancel the deed transfer, and for declaratory relief. Put another way, the pending trial constitutes further action by the trial court that is essential to any final determination of the rights of Galindo and Martha as to the property. As there remain issues to be tried, the trial court’s order is interlocutory, and Galindo’s premature appeal to this court must be dismissed.

Galindo first argues this appeal falls under section 904.1, subdivision (a)(2), which permits appeals from an order made after a final judgment. To be appealable, such a postjudgment order must, among other things, “““either affect the judgment or relate to it by enforcing it or staying its execution.””” (*Roden v. AmerisourceBergen Corp.* (2005) 130 Cal.App.4th 211, 215–216.) Galindo reaches back three years to find an allegedly related judgment: the trial court’s November 16, 2010 oral ruling, which was entered as judgment on March 9, 2011. That judgment held that the property is community property

and that Martha is entitled to one-half the value of the property as of the date of transfer. Galindo argues that the order appealed from here (denying Galindo's argument that the March 9, 2011 judgment is res judicata that would bar the trial from proceeding) is an order "enforcing" that March 9, 2011 judgment. This argument is tied into Galindo's argument in the underlying merits appeal that the judgment is somehow res judicata as to Galindo, even though Galindo was not involved in the trial that led to the judgment, the case was stayed as to Galindo, and the issues tried only involved the rights of Rosendo and Martha as to any community property. While we cannot and do not reach the merits of Galindo's appeal, this attenuated res judicata theory lacks both legal and factual bases and thus does not constitute a basis for appellate jurisdiction.

Put another way, the California Supreme Court has explained that postjudgment orders are not appealable when they "although following an earlier judgment, are more accurately understood as being preliminary to a later judgment, at which time they will become ripe for appeal." (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 652.) As we explained above, the February 6, 2014 order is preliminary to the upcoming posttrial judgment on Martha's claims against Galindo. Thus, Galindo's appeal is not authorized under section 904.1, subdivision (a)(2).

Galindo next argues that this appeal falls under section 904.1, subdivision (a)(6), which permits appeals from an order refusing to grant an injunction. In letter briefing, she makes no effort to explain how the trial court's February 6, 2014 order is one refusing to grant an injunction and instead cites a laundry list of cases with no further explanation as to how they apply to the facts here. Presumably, Galindo believes her "ex-parte application requesting her removal from the upcoming trial" is the same as a request for an injunction preventing the trial court from further processing the case. Galindo is mistaken. An injunction is sought against parties, not courts. (See § 525 ["An injunction is a writ or order requiring a person to refrain from a particular act"]; *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 84, 89–90.)

Galindo's ex parte application did not seek an injunction but instead adjudication on the affirmative defense of res judicata or waiver. An order denying a motion for

summary adjudication on an affirmative defense is not an appealable order. (See *Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 343.) In letter briefing, Galindo also characterizes her ex parte application as a motion to dismiss. Again, an order denying a motion to dismiss is not an appealable order. (*Samuel v. Stevedoring Services* (1994) 24 Cal.App.4th 414, 417.) In sum, an order rejecting a party's affirmative defense and setting a schedule for trial—whether packaged as an ex parte application for removal from trial, motion for summary adjudication, or motion to dismiss—is not an order refusing to grant an injunction under section 904.1, subdivision (a)(6).

Finally, Galindo asks that we exercise our discretion to treat this improper appeal as an extraordinary writ. We decline to do so. That “power should be exercised only in unusual circumstances.” (*In re Marriage of Lafkas, supra*, 153 Cal.App.4th at p. 1434.) Here, Galindo has shown no exigent reasons why review of a typical interlocutory order such as the one here should not await a final judgment. This is a case where a party, upon receiving an adverse determination by the trial court, rushed to the appellate courthouse and circumvented the proper procedures instead of following this court's rules. We cannot approve of Galindo's procedural failures.

DISPOSITION

The appeal is dismissed. Costs are awarded to Martha Aguilar.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.